HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 184 of 2001
Old No. 43 of 1996

A.K. Sharma .... Petitioner

Versus
National Insurance Company & others..... Respondents

Dated: August 25 2004

Hon'ble Rajesh Tandon, J.

Present appeal has been filed against the judgment and award dated 30.10.1995 passed by the Motor Accident Claims Tribunal, Nainital.

Briefly stated the facts giving rise to the present appeal are that the petitioners Sri Bakshis Singh and others has filed a claim petition before the Motor accident Claims Tribunal for grant of compensation on account of death of his wife Amarjit Kaur in a motor vehicle accident on 17.6.1994 at 9.00 P.M. at Paiga, P.S. Kashipur, Nainital. The petitioners have alleged that Smt. Amarjit Kaur was going to his house from Gurudwara Paiga on food, a Maruti Van No. UMM 8747 which was being driven rashly and negligently by Toni Singh hit Smt. Amarjit Kaur due to which she sustained fatal injuries. She was rushed to the hospital where she was declared died.

The claim petition was contested by the opposite parties and have denied that the accident took place due to rash and negligent driving of the vehicle. Opposite party no.3 the

National Insurance Co. has stated in its written statement that the vehicle in question was not insured with it and as such the insurance company is not liable to pay compensation.

On the pleadings of the parties the following issues have been framed:

1. Whether the accident took pace due to rash and negligent driving by the driver of Van No. UMM 8747 ?
2. To what amount of compensation and against which of the opposite parties, are the claimant entitled?

The claims Tribunal on the basis of ocular testimony of eye-witness P.W.2 Balbir Singh ahs held that the accident had taken place due to rash and negligent driving of the vehicle in question. IN reply of issue no.2 the claims Tribunal has assessed a compensation of Rs.50,000/- on account of death of Smt. Amar Jeet Kaur. The claims Tribunal has further held that as the opposite parties no.1 and 2 has failed to prove that the vehicle was validly insured with opposite party no.3 the National Insurance Company, therefore, opposite parties no. 1 and 2 Tony Singh and Sri A.K. Sharma are jointly and severally liable to pay compensation to the claimant petitioner.

The claimants have not come in appeal. The appeal has been preferred by the owner of the vehicle Sri A.K. Sharma. The insurance company in its written statement has clearly denied that the vehicle involved in the accident was not insured with it as the owner of the vehicle has not given any particulars of the insurance policy. The opposite party no.2 appellant has filed Photostat copy of insurance cover note before the Claims Tribuanl which has not been admitted by the insurance company. Although the copy of cover not shows that the insurance was valid from 8.10.93 to 7.10.94 but neither the

photo copy of insurance cover note has been proved with the help of original cover note nor policy has been summoned from the insurance company. The Photostat copy without proving it according to law is inadmissible in evidence and as such the learned Claims Tribunal has rightly held that the appellant owner of the vehicle has utterly failed to prove that the vehicle was validly insured with the respondent insurance company at the time of accident. As there was no valid insurance of the vehicle involved in the accident, therefore, the driver and owner of the vehicle has rightly been held responsible to pay compensation to the claimants.

I find no infirmity in the judgment and award passed by the Claims Tribunal. The appeal lacks merit and is hereby dismissed. No order as to costs.

(Rajesh Tandon J.)

August 25, 2004

*Dhyani